



H.R. 26 - Regulations from the Executive in Need of Scrutiny Act of 2017 (REINS Act) (Rep. Collins, R-GA)

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FLOOR SCHEDULE:

Expected to be considered on January 5, 2017 under a [structured](#) rule.

TOPLINE SUMMARY:

[H.R. 26](#) would amend the [Congressional Review Act of 1996](#) (CRA) to require a joint resolution of approval signed into law within 70 days before an executive branch agency's major rule can take effect.

COST:

A Congressional Budget Office (CBO) estimate is not yet available.

Rule 28(a)(1) of the Rules of the Republican Conference prohibit measures from being scheduled for consideration under suspension of the rules without an accompanying cost estimate. Rule 28(b) provides that the cost estimate requirement may be waived by a majority of the Elected Leadership.

CONSERVATIVE CONCERNS:

There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

Under current law, Congress can repeal, using expedited voting procedures in the Senate, a federal agency's final rule by passing a joint resolution of disapproval within 60 days of publication of the rule in the Federal Register, or the date the agency submits the rule to Congress and the Government Accountability Office (GAO). The president must then sign the joint resolution for it to possess the force of law and negate the federal agency rule.

This legislation would maintain the current CRA procedure for disapproving non-major rules, while establishing a congressional procedure requiring affirmative approval for major rules created by federal agencies. [Major rules](#) include those that result in, or are likely to result in: (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, industries, federal, state, or local government agencies, or geographic regions; or, (3) significant adverse effects on

competition, employment, productivity, investment, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic and export markets.

Section 3 would amend [chapter 8 of title 5 of the U.S. Code](#), detailing the method for congressional review of new major rules. The only change to this section from previous versions of the REINS Act include similar treatment of rules pertaining to the implementation of the Affordable Care Act, as rules implementing all other statutes; that is, major rules require the approval of Congress, and non-major rules may face congressional disapproval.

801. This section would require Congress to enact a joint resolution of approval within 70 days prior to the enactment of a major rule and empowers the president to grant 90-day waivers for emergency situations, including responses to imminent threats or safety, to protect national security, or to implement trade agreements. This section would also establish carry-over provisions from one Congress to the following. It would also require enhanced reporting of federal rules to Congress and the comptroller general.

802. This section would require the introduction of a joint resolution of approval by the respective majority leaders, or their designees, within three legislative days of the publication of a rule in the federal register and the submission of the rule to Congress. This section would also prohibit any amendments to the joint resolution during its consideration. This section would provide for referral of the measure to the appropriate committees in the House and Senate.

802 Subsections (c) and (d) would address the process for expedited consideration in the Senate. Under Senate procedure, a final passage vote would have to occur within 15 session days after a committee reports the measure or is discharged. A motion to proceed would be in order any time after that point. All points of order would be waived, and the motion to proceed would not be subject to a motion to amend, postpone, move on to other business, or a motion to reconsider. Upon agreeing to a motion to proceed to a joint resolution, debate would be limited in the Senate to two hours. Further, the joint resolution is similarly not amendable, and motions to postpone, recommit, and proceed to other business would not be in order. All appeals to the joint resolution would be decided without debate. A vote on final passage would be required to occur following the conclusion of debate.

802 Subsection (e) would address consideration of the joint resolution under House procedure. Committees in the House would be required to report the resolution without amendment no later than 15 days after referral, otherwise they are automatically discharged from additional consideration. Five or more legislative days after the resolution is placed on the calendar, the any member in favor of passage could call up the joint resolution for immediate consideration on the second or fourth Thursdays of each month. The resolution would be debatable for one hour, with time equally divided, with all points of order waived. All intervening motions, such as amendments, motions to recommit or reconsider would be prohibited. If a vote has not been taken by the third Thursday after which the Speaker is authorized to recognize a member for consideration, a final passage vote would occur that day without amendment.

802 Subsection (f) would provide for the House to not take a vote on passage of a Senate-passed joint resolution if that resolution is a revenue measure.

802 Subsection (g) would allow for sections 802 and 803 to apply as rulemaking; these rules with respect to joint resolutions would supersede other rules when explicitly provided. Congress would be permitted to change these rules in the same manner in which they can change other rules.

803. Disapproval for non-major rules under the Congressional Review Act would remain unchanged. This section would permit Congress to disapprove a rule if the president signs, or if

Congress overrules a veto, a joint resolution passed by both Houses. Additionally, this section would provide for expedited consideration in the Senate.

804. This section would provide an exemption for rules of particular applicability, rules relating to agency management, and rules relative to agency organization from the REINS Act.

805. This section would provide for exemption of judicial review for any finding or action under the REINS Act.

806. This section, similar to the Congressional Review Act, would exempt rules on monetary policy from the Board of Governors of the Federal Reserve or Federal Open Market Committee.

807. This section would permit rules relating to hunting, camping and fishing, and select non-major rules that an agency has good cause to find notice and public procedure are unnecessary or contrary to public interest, to take effect in spite of section 801.

Section 4 would allow for an amendment to section 257(b)(2) of the [Balanced Budget and Emergency Deficit Control Act of 1985](#), that would stipulate that rules that undergo the congressional approval process under this act that affect budget authority, outlays or receipts, would be effective unless they are not in accordance with section 802.

Section 5 would require a study and report to Congress detailing the number of regulations in effect on the date of enactment of the REINS Act, including the number of major regulations, and the total estimated cost of such regulations. Reports submitted to Congress would be required to assess whether or not major rules impose new limits or mandates on the private-sector.

Section 6 would constitute a change from previous versions of the REINS Act, and would provide that sections 3 and 4 of the legislation, and the amendments resulting from that section, would take effect one year following the enactment of the legislation.

Notes on Constitutionality of the REINS Act

In the past, some have expressed concern over whether or not the REINS Act violates the constitutionally mandated separation of powers between the legislative and executive branches of the federal government. Some have equated the REINS Act with the Supreme Court's ruling in [INS v. Chadha](#) (Chadha), in which the Court held that a unicameral legislative veto is unconstitutional. [Opponents](#) of the REINS Act argue that in permitting one house of Congress to hold up a regulation from going into effect by failing to pass an approval resolution, it is largely similar to a unicameral veto ruled unconstitutional in Chadha. Some also believe that the REINS Act oversteps the balance of powers between the branches of government.

Proponents of the REINS Act argue that per Article I of the Constitution, legislative acts need both bicameralism and presentment—[meaning](#), both houses of Congress and the president, or a super-majority of both houses, is required, which differentiates the REINS Act from Chadha. The REINS Act does not authorize either house of Congress to overturn a valid regulation; rather, it prevents a major rulemaking from taking effect until a joint resolution from Congress is passed and signed, satisfying the bicameral and presentment requirements. These formal requirements for legislation enumerated in Article I, allow congressional oversight of an agency without violating the separation of powers. Moreover, the REINS Act derives constitutionality from the fact that federal agencies do not have inherent power; rather they are delegated power by the legislature. Congress has previously conditioned regulatory authority on compliance with other procedures in different spheres, including with the [Administrative Procedure Act](#).

In [2012](#), witnesses testifying for the constitutionality of the REINS Act stated: "Agencies have no power to promulgate legislative rules unless it is given to them by Congress...[arguments against REINS' constitutionality] runs off of the assumption that there is some core inherent prerogative of the President

in relation to legislative rulemaking that is threatened by the REINS Act. However, if all of executive branch agencies' rulemakings powers must come from Congress, there can't be any such core Article 2 prerogative."

And further, "The regulations that agencies promulgate are rules of conduct. And in fact, courts talk about these regulations all the time as 'legislative rules.' So we are not talking here about executive power fundamentally; we are talking here about legislative power. So it is a question of Congress reclaiming some of its legislative powers."

The REINS Act passed the 114th Congress by a vote of [243-165](#), the 113th Congress, by a vote of [232-183](#), and the 112th Congress by a vote of [241-184](#).

A past legislative bulletin can be found [here](#).

A section-by-section from the Judiciary Committee can be found [here](#).

AMENDMENTS:

1. [Rep. Goodlatte \(R-VA\)](#) Managers Amendment – This amendment would revise the threshold for identification of major rules to imposition on the economy of costs, as opposed to impacts, of \$100 million or more per year, adjusted for inflation.
2. [Rep. Messer \(R-IN\)](#) – This amendment would require each agency that is promulgating a new rule to identify and repeal or amend a rule or rules already in existence to offset the annual costs of the new rule.
3. [Rep. Grijalva \(D-AZ\)](#) – This amendment would require an accounting of the impacts of greenhouse gas emissions associated with a rule, as well as impact on low-income and rural communities. If risk for cancer, birth defects, kidney disease, or respiratory and cardiovascular illness are increased, or if carbon emissions are increased within these communities, a rule would be deemed a major rule.
4. [Rep. Castor \(D-FL\)](#) – This amendment would exempt any rule that will result in a reduced incidence of cancer, premature death, asthma attacks or respiratory disease in children from the requirements of this legislation.
5. [Rep. Cicilline \(D-RI\)](#) – This amendment would exempt rules pertaining to the protection of public health and safety from the requirements of this legislation.
6. [Rep. Conyers \(D-MI\)](#) – This amendment would exempt rules that provide for a reduction in the amount of lead in public drinking water from major rule designation.
7. [Rep. Jackson Lee \(D-TX\)](#) – This amendment would exempt any product safety rule pertaining to products used or consumed by children under the age of 2, from major rule designation.
8. [Rep. Johnson \(D-GA\)](#) – This amendment would exempt rules that pertain to the improvement of employment, retention and wages of those in the workforce, particularly individuals with significant barriers to employment from major rule designation.
9. [Rep. Nadler \(D-NY\)](#) – This amendment would exempt rules pertaining to nuclear reaction safety standards from the requirements of this legislation.
10. [Rep. Pallone \(D-NJ\)](#) – This amendment would exempt any rule that pertains to the safety of natural gas or hazardous materials pipelines or to prevent or reduce the impact of spills from such pipeline, from major rule designation.
11. [Rep. Scott \(D-VA\)](#) – This amendment would exempt rules pertaining to workplace health and safety by the Occupational Safety and Health Administration or the Mine Safety and Health Administration, necessary to reduce or prevent injury, cancer, or lung disease from major rule designation.
12. [Rep. King \(R-IA\)](#) – This rule would provide for a process for agencies to submit all regulations in effect to Congress for review over a ten-year period.

OUTSIDE GROUPS IN SUPPORT

[National Taxpayers Union](#)

[Heritage Action \(Key Vote\)](#)
[Americans for Prosperity \(Key Vote\)](#)
[FreedomWorks \(Key Vote\)](#)

COMMITTEE ACTION:

H.R. 26 was introduced on January 3, 2017, and referred to the House Committees on the Judiciary, Rules, and the Budget.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not yet available.

CONSTITUTIONAL AUTHORITY:

Congress has the power to enact this legislation pursuant to the following: This bill is enacted pursuant to the power granted Congress under Article I of the United States Constitution, including the power granted Congress under Article I, Section 8, Clause 18, of the United States Constitution, and the power granted to each House of Congress under Article I, Section 5, Clause 2, of the United States Constitution.

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